98TH CONGRESS
1st Session

SENATE

REPORT
No. 98-59

REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 461

To extend the authorization of appropriations for the Office of Government Ethics for five years

together with

ADDITIONAL VIEWS

APRIL 14 (legislative day, APRIL 12), 1983.—Ordered to be printed

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REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS

APRIL 14 (legislative day, APRIL 12), 1983.—Ordered to be printed

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Mr. COHEN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany S. 461]

The Committee on Governmental Affairs, to which was referred the bill (S. 461) to extend the authorization of appropriations for the Office of Government Ethics for five years, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSE

The purposes of S. 461 are to ensure an effective ethics system and to prevent conflicts of interest throughout the Executive Branch by strengthening the Office of Government Ethics and by extending its authorization for five years.

II. BACKGROUND AND NEED FOR LEGISLATION

A. BRIEF HISTORY OF THE OFFICE OF GOVERNMENT ETHICS

In a 1976 report to the Congress entitled "Action Needed To Make the Executive Branch Financial Disclosure System Effective," the General Accounting Office described deficiencies that it had found in Executive Branch procedures to detect and prevent actual and potential conflicts of interest. Among the problems that the GAO identified were that:

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(1) The financial disclosure requirements of executive branch agencies lacked uniformity

Executive Order 11222, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," issued on May 8, 1965, by President Lyndon Johnson, requires confidential financial disclosure by officers and designated employees of Executive Branch agencies. The GAO concluded, however, that financial disclosure requirements implementing the Executive Order were inconsistent throughout the Executive Branch agencies and that a more uniform and comprehensive system of financial disclosures should be adopted.

(2) Federal agencies had insufficient procedures for the collection and review of financial disclosure reports

The GAO found that, in many agencies, financial disclosure reports were not filed, or were filed incorrectly or late. It also concluded that agencies devoted inadequate resources to the review of disclosure statements: many reviewing officers were untrained and their duties as ethics counselors were usually performed in addition to their other full-time responsibilities.

(3) Many agencies had inadequate interpretations of standards of conduct regulations

The GAO found that, although agencies had adopted the general guidelines of the Civil Service Commission governing standards of conduct, many Federal agencies failed to tailor these regulations to their own particular needs and to situations encountered by their own employees. Some agencies also had failed to incorporate statutory restrictions on financial holdings by agency officers and on employee conduct into their own financial disclosure regulations. The GAO concluded that these problems resulted in frequent standard of conduct violations by Executive Branch employees.

(4) Resolutions of ethical problems by Federal agencies were often untimely or unsatisfactory

Even when agency ethics officials found conflict-of-interest problems or violations within their agencies, resolution of these conflicts was often slow or inadequate. In many cases, a year would elapse before a question concerning a financial activity or interest was resolved, primarily because agencies lacked adequate procedures for monitoring employee disclsoure statements and for resolving conflict-of-interest problems.

The GAO concluded that a "major and perhaps the most substantial contributing factor" to all these problems was "the decided lack of a central supervisory authority" to coordinate and monitor agency compliance with an enforcement of financial disclosure and standards-of-conduct requirements. The GAO noted that while the Civil Service Commission had the responsibility to implement the Executive Order 11222, an Executive Branch ethics office with specific authority to direct, monitor, and enforce compliance by both agencies and officials was necessary to improve the ethics systems.

In 1977, the Senate Committee on Governmental Affairs endorsed the conclusions and recommendations of the GAO and re-

ported S. 555, the Public Officials Integrity Act. In its report, the Committee stated that:

> Public financial disclosure is the first step toward a self-monitoring ethics system. However, it is concluded that there must exist within the Executive Branch a cohesive infrastructure for the enforcement of current statutes, executive orders, and regulations dealing with standards of conduct. Primary responsibility for overseeing agency enforcement of these regulations must be given greater priority and staff resources. In 1975, the Civil Service Commission designated responsibility for overseeing the entire Executive Branch conflict-of-interest enforcement system to only one full-time attorney who was given the assistance of one part-time secretary. This minimal allocation of resources is indicative of the lack of priority given ethics enforcement in the past. (Report of the Committee on Governmental Affairs, U.S. Senate, 95th Cong., 1st Sess., on S. 555 (1977 at 30))

To create an improved, self-monitoring ethics system, the Congress passed the Ethics in Government Act of 1978, incorporating the basic concepts of S. 555.

Title II of the Ethics Act established a uniform system of public financial disclosure by designated Executive Branch officials and prescribed procedures for the contents, filing, and review of the public financial disclosure reports. The Congress adopted this system as a necessary step to increasing pubic confidence in federal officials and, consequently, in the government itself, by ensuring that conflicts of interest by public officials are detected and prevented.

Title IV of the Act established the Office of Government Ethics within the Office of Personnel Management to oversee, monitor, and enforce compliance by agencies and officials with the financial disclosure and standards-of-conduct requirements.

B. STRUCTURE OF THE OGE

Title IV of the Ethics Act charges the Director of the OGE, who is appointed by the President, with the advice and consent of the Senate, with the responsibility to provide "overall direction to Executive Branch policies relating to conflicts of interest on the part of officers and employees of any Executive agency." In performing his or her duties, the Director is subject to the general supervision of the Office of Personnel Management. Subsection 402(b) of the Act enumerates 15 responsibilities of the Director to carry out this authority. These responsibilities include:

> (1) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Office of Personnel Management pertaining to conflicts of interest and ethics in the Executive Branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and

employees in the Executive Branch as required by Title II of this Act;

(2) developing and recommending to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations to be promulgated by the President or the Office of Personnel Management pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of Title II of this Act by officers and employees of the Executive Branch and Executive agency officials responsible for receiving, reviewing and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict-of-interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the Executive Branch;

(6) interpreting rules and regulations issued by the President or the Office of Personnel Management governing conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict-of-interest problems in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10) requiring such reports from Executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict-of-interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the Office of Personnel Management and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict-of-interest laws;

(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict-of-interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(14) providing information on and promoting understanding of ethical standards in Executive agencies; and

(15) developing and recommending for promulgation by the Office of Personnel Management such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act.

The OGE is a small agency within the Office of Personnel Management. Section 405 of the Ethics Act authorizes $2 million annually for the Office for fiscal years 1979 through 1983. The budget and staff levels of the OGE for 1980–1983 have been as follows:

Fiscal year	Budget level (thousands)	Staff positions
1980	637.4	16.0
1981	938.5	26.0
1982	951.3	23.4
1983	1016.0	23.5

C. RELATIONSHIP WITH OTHER AGENCIES

(1) Relationship with agency officials

The Ethics Act establishes a decentralized yet coordinated ethics program for the Executive Branch, consisting of the agency heads, the designated ethics officials in separate departments and agencies, and the OGE.

The agency head is responsible for and must exercise personal leadership in establishing, maintaining, and carrying out the agency's ethics program. The agency head selects the designated agency ethics officials (DAEOs) and is required to make available to the agency's ethics program sufficient resources, including investigative, audit, legal, and administrative staff to enable the agency to administer its program in a positive and effective manner. Similarly, the Act expressly provides that the agency heads are required to cooperate with the OGE by making "services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under the Act" (Section 403). Finally, the agency head is responsible for imposing administrative sanctions on its employees who breach ethical requirements.

The DAEOs are given the task of managing the day-to-day operation of the agency's ethics program, including reviewing financial disclosure reports, counseling agency personnel on how to resolve conflicts, and training and enforcing the agency's standards of conduct. In his article entitled "The Ethics in Government Act, Conflict of Interest Laws and Presidential Recruiting," J. Jackson Walter, former Director of the OGE, expressed why these functions are properly the responsiblity of the DAEOs:

> The Office of Government Ethics relies upon the DAEOs to conduct a review since, as agency officials, the DAEOs know in detail the duties of the office in which the nominee is to serve, the agency's own specific conflict statutes

> and regulations, and the particular matters that most likely could result in a conflict of interest given the nominee's disclosed financial interests. (Public Administration Review, Nov./Dec. 1981 at 661.)

In addition, because prevention of conflict of interest is often best achieved through counseling and working closely with an official, many of these tasks are most effectively performed when the official is counseled personally by a member of his or her own agency.

Finally, and most important, the DAEOs act as the liaison between the agency and the OGE.

The OGE's roles are that of coordinator of the ethics programs and interpreter and enforcer of the ethics laws. Through its functions, described below, the OGE provides a uniform, consistent ethics policy in the Executive Branch and monitors the actions of the agency officials to ensure that ethics programs are adequately enforced.

The Committee endorses the decentralized ethics system as necessary and workable. The sheer volume of public financial disclosure statements filed in the Executive Branch—approximately 11,000 in 1982—and of Executive Branch personnel requiring ethical counseling or assistance dictates a decentralized system. Moreover, the system strikes an appropriate balance between the need to gain the confidence of agency officials and personnel who are being advised in conflict-of-interest matters and the need to guarantee independent and uniform ethics policies in the Executive Branch.

(2) Relationship With the Department of Justice

18 U.S.C. 202-209 set forth the criminal conflict-of-interest laws that apply to Executive Branch officials and employees. Because the Department of Justice has the sole responsibility to enforce criminal laws, the system established by the Ethics Act has necessitated a close relationship between the OGE and the Department so that they are able to perform their complementary responsibilities. On May 19, 1980, the OGE and the Department of Justice entered into a Memorandum of Agreement providing that:

> the Director of the OGE has the authority to render formal advisory opinions which involve interpretation or application of the criminal conflict-of-interest laws;
>
> the Director of the OGE shall consult with the Criminal Division before rendering an advisory opinion on an actual or apparent violation of conflict-of-interest laws. If the Criminal Division begins an investigation of the matter, the OGE will not issue an advisory opinion until after a decision not to prosecute has been made;
>
> if the Director proposes to render an advisory opinion where there has been no actual or apparent violation of a criminal law, he shall consult with the Office of Legal Counsel of the Department of Justice;
>
> any person who relies in good faith on an advisory opinion pertaining to a criminal conflict-of-interest law shall not be subject to prosecution.

The Committee believes that this Memorandum of Understanding between the Department of Justice and the OGE effectively coordinates the functions of the two agencies.

The OGE cannot usurp the authority of the Department of Justice to investigate or prosecute possible violations of the criminal statutes. Similarly, the Department of Justice must not be able to overrule the findings of the OGE in interpretating or applying conflict-of-interest requirements where there has been no actual or apparent violation. To date, the relationship of the OGE and the Department of Justice has proved to be effective and cooperative. In practice, the line of authority has been that the OGE has the principal role in prospectively applying and interpreting the conflict-of-interest laws and regulations and applying these rules in cases where there has been no actual or apparent violation of these laws. Once an allegation of criminal conduct emerges, it is the primary role of the Department of Justice to investigate.

The OGE also has a close relationship with the Department's Office of Legal Counsel, especially in its interpretation of the conflict-of-interest laws.

Finally, the Act requires that, in proposing regulations and improvements in the conflict-of-interest laws and requirements, the Director must consult with the Attorney General. The Committee believes that this relationship results in a coordinated, consistent application of the conflict-of-interest laws by the Executive Branch.

D. NEED FOR AND HISTORY OF S. 461

Section 405 of the Ethics Act authorizes appropriations of $2 million annually for the Office of Government Ethics for five fiscal years, ending on September 30, 1983. In anticipation of this sunset date, the Subcommittee on Oversight of Government Management has studied the performance of the OGE over the past year. On February 3, 1983, Senator William S. Cohen introduced S. 461, to extend the authorization of the OGE for five fiscal years and to "start the discussion on maintaining the OGE, an important reform of the Ethics Act."

The bill was referred to the Committee on Governmental Affairs and subsequently to the Subcommittee on Oversight of Government Management, which held a hearing on S. 461 on February 24. The Subcommittee heard testimony from David R. Scott, Acting Director of the Office of Government Ethics, J. Jackson Walter, President of the National Academy of Public Administration and former Director of the OGE, and Ann McBride, Vice President of Program Operations, Common Cause.

In addition, the Subcommittee received written testimony from the Office of Personnel Management, the Department of Justice, and Roswell Perkins, the former chairman of the New York City Bar Association's task force that first recommended the creation of an Executive Branch ethics office in its 1960 report, "Conflict of Interest and the Public Service." At the request of the Subcommittee, the General Accounting Office issued a report on the Office of Government Ethics and related aspects of the Ethics in Government Act of 1978 on February 23, 1983. The unanimous recommendation

of all who submitted testimony to the Subcommittee was that the Office of Government Ethics should be reauthorized.

Some of the specific issues raised at the Subcommittee's hearing were:

How well has the OGE performed its statutory functions in its five-year history?

Are any amendments to the Ethics Act necessary to enable the OGE to perform its statutory functions more effectively?

Are structural changes necessary to ensure the independence of the OGE?

What changes in the Executive Branch financial disclosure provisions are necessary to correct problems or inequities in the present law?

Has the Ethics Act impeded presidential recruitment?

On March 10, the Subcommittee unanimously voted to report S. 461. On March 17, the Committee on Governmental Affairs met to consider the bill and, by a vote of 10 to 0, approved an amendment in the nature of a substitute to S. 461, offered by Senators Cohen and Levin, and ordered it reported to the Senate. The substitute offered by Senators Cohen and Levin, made as a result of the Subcommittee's hearing, would enhance the independence of the OGE and correct problems in the present law.

III. Performance of the OGE

The responsibilities given to the OGE under the Act can be classified into five major areas: regulation, review of financial disclosure reports, education and training, guidance on conflict-of-interest laws, and enforcement. Based on its hearing and investigation, the Committee concludes that the OGE has performed these functions well over the past five years. While there are certain areas in which the role and duties of the OGE should be clarified, the Committee strongly believes that the OGE has gone far in fulfilling its responsibilities under the Ethics Act and that S. 461, which reauthorizes the Office for five more years, should be adopted.

A. Regulatory Authority

The Ethics Act provides that the Director of the OGE has the responsibility to develop and recommend to the Office of Personnel Management, in consultation with the Attorney General, rules and regulations pertaining to conflict of interest and ethics in the Executive branch. To date, the OGE has proposed regulations implementing the Executive Branch financial disclosure system established by Title II of the Act and the post-employment conflicts-of-interest requirements established by Title V of the Act, as well as the implementing regulations governing its operations. In addition, the OGE has exercised its authority to designate senior Executive Branch officials who are subject to the post-employment conflict-of-interest rules and to designate certain components of agencies as separate for purposes of applying the post-employment conflict-of-interest requirements. The Committee believes that these regulations were developed in a timely fashion and have adequately reflected congressional intent.

Under present law, regulations developed by the Office of Government Ethics must be approved and issued by the Office of Personnel Management. To ensure effective and coordinated policies relating to ethics and conflicts of interest in the Executive Branch, the Committee believes the OGE should have primacy in these matters. Requiring OPM approval of proposed regulations and rules pertaining to these issues could not only compromise the independence of the OGE, but also prevent the OGE from exercising its primary role of developing, coordinating, implementing and enforcing Executive Branch policies on ethics and conflict of interest. The current requirement for OPM approval and issuance of OGE regulations is simply unnecessary. The Committee believes that the Director of the OGE should be allowed to issue regulations in his own name to underscore the central role of the OGE in these matters.

The Oversight Subcommittee received testimony that uncertainty exists about the OGE's authority to implement Executive Order 11222. A key element in the Executive Branch ethics system is this Executive Order, "Prescribing Standards of Ethical Conduct for Government Officers and Employees," and its implementing regulations udner 5 CFR 735, which govern the responsibilities and standards of conduct for Executive Branch officials. The Committee believes that the OGE's regulatory authority extends beyond implementation of the financial disclosure and "revolving door" provisioins of the Ethics Act to encompass this Executive Order. Formal jurisdiction over this Executive Order originally rested with the old Civil Service Commission and now rests with its successor agency, the Office of Personnel Management. In practice, however, the OGE interprets the Executive Order and its implementing regulations. While the Committee believes that section 402 of the present law gives the OGE ample authority to develop and interpret these standard-of-conduct requirements, the Committee wishes to clarify that the OGE—not the Office of Personnel Management, the Merit Systems Protection Board, or other offshoots of the Civil Service Commission—has jurisdiction to perform these functions.

B. REVIEW OF FINANCIAL DISCLOSURE REPORTS

The Committee believes that the OGE review of financial disclosure statements filed by certain Executive Branch officials is one of the most important means of detecting and preventing conflicts of interest. This is especially true in the case of officials who are just entering government service and who may have financial holdings that would, if undetected, create either actual or perceived conflicts of interest. In order to be effective, these reviews by the OGE must be independent, careful analyses of the information provided in the statements, rather than mere "rubber stamp" approvals of the opinions of the agency eithics officials who conduct initial reviews of the reports. The present law is clear in allowing the OGE to disagree with, and overrule, the findings of the ethics officials in reviewing these reports when it believes that an official is not in compliance with applicable laws and regulations.

The OGE has performed its statutory function well by conducting thorough and efficient reviews of financial disclosure state-

ments. The success of the OGE in this area is demonstrated best by its role in the 1980 presidential transition period. The OGE's regulations issued in 1980 set forth an expedited procedure for reviewing the statements of presidential nominees requiring Senate confirmation. Under this system, first the ethics official of the agency in which the nominee will serve reviews the report. If the official concludes that there are no unresolved conflict-of-interest problems, he or she must certify the report and write an opinion letter to the Director of the OGE within three days of receiving the report. The Director then reviews the report and the opinion letter and, if satisfied that there is no unresolved conflict, signs the report and writes an opinion letter to the Senate committee responsible for confirming the nominee. In practice, the Senate confirmation committees have considered the OGE opinion letter and approval of the financial disclosure report as a condition precedent to holding the confirmation hearing. Thus, this procedure provides an important institutional check against conflicts of interest by presidential appointees.

In addition to its regulations, the OGE further facilitated the transition through its computerized process for tracking the progress of presidential nominations. David R. Scott, Acting Director of the OGE, described this system in his testimony at the Oversight Subcommittee's hearing on S. 461:

> Following the election, OGE immediately developed lines of communication with the presidential transition team and, subsequently, the White House Personnel Office and the Counsel to the President. Key staff members of each Senate confirmation committee were contacted to discuss operating procedures, and almost daily contacts were maintained throughout the 1981 transition year. An OGE attorney was assigned to work with the transition team to smooth the process and to assist in any and all matters concerning the Act. A computer system was developed for OGE to keep track of the financial disclosure reports from approximately 800 appointees throughout the confirmation process and to be able to give a daily status report to the White House. A procedure was devised whereby the President-Elect's notice of "intent to nominate" was treated as tantamount to nomination for Executive Branch review purposes, and receipt of an intended candidate's financial report was deemed to be receipt of a form for purposes of public disclosure.

The OGE's disposition of cases during the 1980 transition period was swift and impressive. According to statistics provided to the Oversight Subcommittee, during calendar year 1981, the OGE received financial disclosure reports from 615 nominees. On the average, the OGE sent the reviewed report with an opinion letter to the Senate confirmation committee within four days of the appointee's nomination by the President. All but fifteen reports were sent to the Senate prior to the first confirmation hearing by the Senate committee.

In each of these cases, the OGE conducted an independent review of the form and, in many instances, counseled nominees or intend-

ed nominees on how to comply with conflict-of-interest requirements.

The Committee commends the OGE for its fine performance during 1981, which was the first test of whether the financial disclosure system could withstand the pressures of a transition period. The Committee agrees with the characterization of Mr. Scott that the OGE—and the Ethics Act itself—passed this test with distinction:

> Overall, despite initial fears and media reports that the Ethics in Government Act of 1978 would be a bottleneck in staffing the new Administration, this did not occur. Since 1981, over 1,000 Presidential appointees have come into the Executive Branch of Government with almost every conceivable type of financial interest. Agreements reached with appointees to protect them and the Government against conflicts of interest have withstood the scrutiny of the Senate, the White House, public interest groups, the GAO, and the news media. We believe that the Office fully met the test provided by the transition in a highly professional and timely manner. The protections set in place for the nominee, the public, and the Government heightened the sense of integrity and openess in the Federal Government.

C. EDUCATION AND TRAINING

The OGE has performed its statutory responsibility to "provide information on and promote the understanding of ethical standards in Executive agencies" through its strong commitment to educating agency employees. Over the past five years, the OGE has developed four different training courses which it has conducted at 29 federal agencies in cooperation with the designated agency ethics officals and their staffs. These programs include training on the review of financial discolosure reports, an ethics program for government attorneys, and training used in employee development programs in federal agencies.

An important initiative in this area has been the cooperation of the OGE with the inspectors general in promoting ethics training. For example, the OGE has conducted seminars for several agencies using "Public Integrity Training Program" materials released under the auspices of the President's council on Integrity and Efficiency, comprised of the inspectors general. In addition, the OGE has developed an ethics training program for the staffs of the inspectors general. The Committee views the coordination of the OGE and the inspectors general as a positive step toward the increased enforcement of ethical standards throughout the Executive Branch. The Committee agrees with the OGE's assessment on how this cooperation can prevent ethical misconduct.

> The partnership of IGs, DAEOs and OGE must emphasize that the best and most efficient way of correcting lapses of integrity is to prevent them in the first place. This prevention program will certainly require substantially increased training of employees at all levels to insure that:

- they will recognize a conflict-of-interest situation before becoming involved in it;
- they will know where to go for guidance and information on ethical issues;
- they will know that lapses of integrity will not be tolerated; and
- they will understand that failure to maintain the high integrity required of public employees will adversely affect their careers and private lives. (OGE, Third Annual Conference materials June, 1982.)

While the Ethics Act does not refer to the inspectors general directly, the cooperation between the inspectors general and the OGE has proved benefical to the OGE's education and training efforts and could be further enhanced through appropriate statutory language.

In addition to training agency personnel, the OGE has heightened public awareness of the ethics program through informational pamphlets, speeches, and annual conferences. Its formal and informal advisory opinions, in which the OGE applies the conflict-of-interest and standards-of-conduct requirements to specific cases, are also available to the public.

These actions by the OGE are good first steps in educating the public on the ethics laws. More work, however, is necessary in this area. J. Jackson Walter testified, for example, that there is often confusion, especially among potential nominees, about what the ethics laws actually require. The Committee agrees with the recommendation of the National Academy of Public Administration concerning the need for additional training in this regard:

> In view of widespread misunderstandings concerning the restrictions in these statutes, steps should be taken by the White House and by the Office of Government Ethics to educate the public generally and to inform prospective appointees in specific terms. There is considerable confusion, even among well-informed individuals, about what these laws require and about the distinction between what the Ethics in Government Act requires and what the conflict-of-interest laws requires. Misinformation and exaggeration have misled some potential candidates about the procedural burdens and substantive requirements of these laws and may have discouraged possible acceptance of federal positions.

While the Committee believes that the OGE has been effective in training agency ethics officials and career civil servants, the Committee has been concerned by recent instances in which high-ranking officials appear to have been unaware of ethical standards of conduct. For example, the *Washington Post* reported that Rita Lavelle, former assistant administrator of the Environmental Protection Agency, stated that she was never informed that the EPA had a detailed code of ethics. Similarly, the *Post* reported that Arthur Hull Hayes, Jr., commissioner of the Food and Drug Administration, expressed surprise about concern over possible overlaps between the fees and travel expenses he was paid by outside groups

and the reimbusement he received from his agency. ("A Refresher Course in Ethics," *Washington Post,* March 9, 1983, at 24-A.)

While not passing judgment on the merits of these two cases, the Committeee believes that steps should be taken to ensure that political appointees are fully aware of conflict of interest and other ethical requirements.

It is crucial that officials who are in major policy-making positions and who are highly visible to the public be free from conflicts of interest. Thus, the Committee encourages the OGE to place special emphasis on the education of top-level Executive Branch officials. Although much of this training will be performed by the ethics officials in individual agencies, it is the responsibility of the OGE to ensure that top-level officials are being adequately apprised of ethical requirements both when entering government service and on an ongoing basis.

The Committee believes that these educational efforts, directed at persons both within and outside government, are essential to preventing conflicts of interest. They also increase public confidence in government by informing the public that ethical standards exist and are being actively enforced.

D. GUIDANCE AND INTERPRETATION OF THE ETHICS LAWS

The OGE has provided valuable guidance to both federal agencies and the public on how to interpret and comply with the conflict-of-interest, standards of conduct, and financial disclosure requirements. It has accomplished this primarily through its formal advisory opinions and informal letter opinions. Section 402 of the Act requires the OGE to establish a formal opinion service whereby the Director gives opinions on matters of general applicability and first impression concerning the application of the Ethics Act, criminal conflict-of-interest laws and standards of conduct regulations. Under this procedure, designated agency ethics officials, or any other person directly involved in a situation requiring the interpretation of the Ethics Act, may request a formal advisory opinion. The Director decides whether to issue a formal opinion, taking into account such factors as the nature of the question and the potential number of persons affected by the situation. Once issued, the formal order has a binding effect on the parties involved and on similar transactions. Moreover, any person who relies in good faith on a formal opinion is not subject to criminal or civil prosecution, or adverse administrative actions.

Due to the binding effects of the formal advisory opinions, the OGE has used this mechanism rarely. To date, it has issued only two such opinions. It has chosen instead to supplement the formal advisory opinions with informal letter opinions. These letters consist of responses by the OGE to questions posed by DAEOs, government officials and employees, and private citizens concerning the application of the ethics laws to particular sets of facts or to proposed transactions or activities. As of Jan. 1983, the OGE had issued 74 informal letter opinions on issues ranging from whether disqualification requirements extend to an inspector general to whether book royalties are counted as "earned income" for pur-

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poses of determining limitations on outside earnings for Senate-confirmed nominees.

In addition, many of the informal opinion letters answer questions from private citizens or former government officials, primarily about the post-government employment "revolving door" restrictions. For example, in a letter opinion dated August 13, 1982, the OGE advised that a former federal attorney would be barred by 18 U.S.C. 207(a) from representing a state before any federal agency or employee in the state's prosecution of an individual for securities fraud because the former federal employer had participated personally and substantially in the federal government's prosecution of the same individual for the same activities.

A third means by which the OGE provides interpretation of the ethics laws is its "telephone practice." A substantial amount of staff time is devoted to telephone consultations through which the OGE staff attorneys respond to questions from both the public and government employees concerning conflict-of-interest requirements. In November 1982, five OGE attorneys handled 380 telephone consultations. Extrapolating this figure for the year indicates that the annual telephone consultations provided by the OGE number in the several thousands. During the presidential transition periods, these calls increase greatly.

The Committee believes that these functions of the OGE are valuable tools in preventing conflicts of interest and ethical problems. By acting as a small "law firm" for both the public and private sectors, the OGE assists individuals in identifying and avoiding ethical violations and brings uniformity to the interpretation of the ethics laws.

E. ENFORCEMENT

The final major function of the OGE is its enforcement of the ethics laws. It performs this function in four ways: by monitoring agency ethics programs, by ordering that Executive Branch officials take corrective actions to comply with the ethics laws, by issuing public statements, and by referring possible violations of conflict-of-interest laws to the Department of Justice for investigation.

(1) Monitoring and compliance activities

The OGE Monitoring and Compliance staff, which consists of nine analysts, conducts comprehensive reviews of the ethics programs in federal agencies. Each review evaluates the agency's procedures for filing and reviewing public and confidential disclosure reports and for making the public reports available for public inspection. The OGE review includes a random check of financial disclosure statements to determine whether the statements are complete and whether there are any questionable interests disclosed on the statement, in light of the official's duties.

The OGE also evaluates the agency's procedures for following up on conflict-of-interest problems identified during the DAEO's review of the financial disclosure statements. It considers, for example, whether the agency has taken timely remedial actions when conflicts of interest occur, whether the agency has been aggressive in requiring officials to recuse themselves from matters in

which they have personal interests, and whether the agency has given high priority to conflict-of-interest problems. Additionally, the OGE requires documentation from the agency on how presidential appointees have honored agreements that they made—such as recusal, divestiture, or termination of memberships—to Senate confirmation committees. Monitoring these agreements is a crucial element of a vigilant ethics system, and the OGE should continue to give this function a very high priority.

While the agency review focuses primarily on the actions of the DAEOs, it also evaluates the personnel office and inspector general office to determine whether the agency is using all available resources to train and enforce ethical standards. Finally, the OGE evaluates the agency's standards of conduct regulations to determine whether they adequately address special ethical problems facing officials within the agency.

In fiscal year 1982, the OGE conducted reviews in 20 departments and agencies and in 115 regional offices and military installations. Upon completion of each review, the OGE sends a report of its findings and recommendations to the agency ethics officer. Follow-ups are conducted to determine if the deficiencies in the system have been corrected.

Due to the decentralized nature of the ethics program in the Executive Branch, frequent comprehensive reviews of agency ethics procedures are crucial. Many of the day-to-day decisions and counseling of officials involving ethics are performed by the agency ethics officials and other agency officials. Thus, through its reviews, the OGE must ensure that the ethics officials are enforcing ethical standards independently and actively. The OGE can also determine this through its routine contacts with the DAEOs.

(2) Ordering corrective action by officers and employees

Subsection 402(b)(9) of the Act gives the Director the responsibility to order "corrective action on the part of agencies and employees which the Director deems necessary."

The Director exercises this enforcement power through his authority to approve financial disclosure reports of specified Executive Branch officials. If a financial disclosure reports of specified Executive Branch officials. If a financial disclosure statement reveals that an official has a conflict-of-interest problem, the Director can order the official to take remedial action, such as divestiture, recusal, or establishing a blind trust. If the official does not take such actions, the Director may refer the matter to the agency head or, in the case of Senate-confirmed officials, to the President for appropriate administrative sanctions. The Director's refusal to approve a financial disclosure report is also a potent enforcement tool. For example, the Director's refusal to sign a financial statement can delay confirmation of a nominee, as Senate committees generally will not proceed to consider a nomination prior to receipt of the Director's certification letter.

The Committee believes that the OGE has exercised its enforcement power appropriately and independently. In 1981, for example, the OGE reviewed the financial disclosure resports of 615 nominees. Of this number, the OGE ordered that corrective action be taken in 354 cases in order to shield the officials from conflicts of

interest. Of these corrective actions, 70 percent took the form of resignations from prior positions or agreements by the official to disqualify himself or herself from matters concerning companies in which they held financial interests. At the Subcommittee's hearing, Senator Cohen questioned Mr. Scott on how the OGE ensures that corrective actions are actually taken by these officials.

> Senator COHEN. You indicated that over 800 disclosure reports were sent to the Senate confirmation committees within four days of Senate hearings.
>
> In all of those cases, were the problems actually resolved, or were there plans made to resolve the issues that were raised in the confirmation?
>
> Mr. SCOTT. Yes . . . before we will sign the statements, the conflict problems must be either resolved or there must be a plan that the nominee has agreed to, to make them in compliance with the law before we will sign the report. So, therefore, the answer would be yes.
>
> Senator COHEN. Does the OGE monitor compliance?
>
> Mr. SCOTT. Mr. Chairman, yes, we do. We like to think that this is really the first time in the Executive Branch this has ever been followed up. Mr. Covaleski's section, his management analysts, go into the agencies and do spot-checks and followups on whether the undertakings have been followed through.

Subsection 402(b)(9) of the Act also authorizes the Director to order corrective action by an agency to ensure compliance with the conflict-of-interest requirements. The legislative history of the present law provides a good example of when such corrective action may be appropriate:

> In performing his responsibility to monitor compliance with the disclosure provisions of the statute, the Director might discover that an agency has failed to comply with this statute or related laws or regulations governing standards of conduct. In such cases, the Director is empowered to order an agency to comply with applicable regulations and to direct the type of corrective action the agency must take. (Report on S. 555, at 148.)

(3) Issuing public statements

A third method by which the OGE could exercise its enforcement authority is to issue public reports concerning its findings. This mechanism is especially important in cases involving highly visible officals which have already been made public. An example of when such a report could have served as an enforcement tool involves Attorney General William French Smith's 1982 disclosure statement.

The Attorney General's 1982 annual disclosure statement revealed that the Attorney General had received a $50,000 severence payment from Earl M. Jorgensen, on whose Board of Directors the Attorney General had served prior to entering federal service. The Department of Justice DAEO approved the report and sent it to the OGE, which questioned the propriety of the severence payment. Soon after the OGE review of the statement, the Attorney General

voluntarily returned the severence payment, and the issue was resolved to the satisfaction of the OGE Director. At the hearing, Senator Cohen questioned Mr. Scott on whether the OGE should issue public statements in such cases:

> Mr. SCOTT. . . . In an instance like the Attorney General's that you mentioned, that came up through the review of his public financial disclosure report.
>
> And that was an instance where nobody was asking us for an opinion, but since we had to review the form, there was a question of what we felt the facts were at the time, what had to be done to have him in compliance with the laws.
>
> And, therefore, it would be exactly the type of instance where we would normally not issue a public statement as long as actions or events took place that we felt warranted our signing the public disclosure report.
>
> Senator COHEN. Suppose your views were disregarded in that regard?
>
> Would you then make a public statement saying OGE feels its interpretation of conflict of interest is the correct one, as opposed to, let's say, the Justice Department or OPM? How would you handle that?
>
> Mr. SCOTT. Mr. Chairman, I am happy to sit here before you and say that no one has really disregarded us so far. But if they did, I think that we would go public.
>
> Senator COHEN. We are not talking about whether they have in this particular instance or any instances, but whether or not we formulate a law so as to protect the future as well, that you might have an administration which could, within the parameters of the looseness of the language or the lack of guidelines, nonetheless suppress certain information, and you would not go public with it.
>
> But what you are saying is if you felt that your recommendation were being disregarded on a high-level official, you would feel compelled to issue a public statement, define what your interpretation of the conflict-of-interest statutes are?
>
> Mr. SCOTT. Absolutely.

A recent statement issued by the OGE involving presidential adviser Michael Deaver provides a good illustration of how a public statement in highly publicized cases can end speculation over whether an official has engaged in ethical misconduct. Since December 1982, there had been speculation in the press concerning whether the terms under which Mr. Deaver contracted to write a diet book while in public office abridged ethical standards or conflict-of-interest laws. On March 25, 1983, the OGE issued a public statement concluding that, based on relevant facts, Mr. Deaver had not violated any criminal or civil statutes. The report also concluded that both the OGE and the White House agency ethics officer must closely watch the further actions of Mr. Deaver relating to the publication of the book in order to ensure that the actions comply with Executive Order 11222, which prohibits officials from using—or appearing to use—their public offices for private gain.

The Committee believes that the OGE report performed the important functions of explaining the issues involved to the public and ending speculation over whether the official involved engaged in wrongdoing.

The Committee strongly believes that the OGE should retain discretion over when to issue public statements. The ability to issue a public report is an important enforcement tool that can be particularly valuable in highly visible cases. Such public statements not only resolve the controversy surrounding such cases, but also increase public confidence in and awareness of the ethics program by indicating that an independent entity has reviewed the matter for ethical violations.

(4) Referring matters for investigation to the Department of Justice

A fourth method by which the OGE exercise its enforcement authority is by referring matters to the Department of Justice for investigation. Under subsection 402(b)(13) of the Act, the Director must cooperate with the Attorney General in developing an effective system for reporting alleged violations of conflict-of-interest laws to the Department of Justice. Once facts that have come to the attention to the OGE suggest that a violation of a conflict-of-interest statute may have occurred, it is the responsibility of the OGE to refer the matter to the Department of Justice for further investigation. If the Criminal Division of the Department decides to undertake an investigation, the Director of the OGE must not render an advisory opinion concerning it until the Department has decided not to prosecute. When a decision not to prosecute has been made, however, the OGE may consider the matter to determine whether there has been a violation of ethical standards of conduct or whether any administrative sanctions or corrective action should be taken. This system has proved to be workable in practice and is necessary for the full enforcement of conflict-of-interest laws.

IV. Provisions of S. 461

A. REAUTHORIZE THE OFFICE OF GOVERNMENT EHTICS FOR 5 YEARS

Section 11 of S. 461, as reported, extends the authorization of the OGE for five years beyond its present expiration date of September 30, 1983. The need still exists for the Office of Government Ethics to guide, coordinate, and monitor a strong and effective ethics program in the Executive Branch. The Committee is convinced that the OGE has performed its statutory functions thoroughly and efficiently and deserves to be reauthorized. While the present law requires amendments in certain areas, these are offered only to ensure that the OGE is able to act independently, and to correct problems in the financial disclosure provisions of the Act.

A major issue examined by the Oversight Subcommittee was the effect of the requirements of the Ethics Act on the recruitment of qualified individuals to serve in the Executive Branch.

A recurring criticism of the Ethics Act has been that it impedes presidential recruitment. Former Assistant to the President for Presidential Personnel E. Pendleton James, for example, asserted

in an April 19, 1982, *Business Week* article that the law "is defective and that there is an urgent need to modify it, if we value competence together with ethics in government." Similarly, at the OGE's Third Annual Conference on June 8, 1982, Fred Fielding, Counsel to the President, said:

> From our experience, we believe it to be true that in a significant number of cases, talented individuals who are otherwise willing to serve, even at considerable financial sacrifice, have concluded that the price of a detailed public disclosure of one's private affairs is simply too high a price to pay.

The opposite view was expressed by Common Cause both at the conference and in testimony before the Subcommittee. Citing OPM surveys of officials leaving government, Ann McBride of Common Cause expressed the view that the Ethics Act has not had a significant impact on presidential recruitment and that federal pay caps are a far greater disincentive to federal service.

It is difficult to assess the exact impact that the Ethics Act has had on the recruitment of qualified officials to serve in government. As Mr. Fielding said during the 1981 OGE conference, "To be fully honest . . . we do not know how many people used the Act in their conversations with us as an excuse because, although they were flattered to be asked, they did not want to accept for another reason, probably financial." The Committee looks forward to the completion of a major National Academy of Public Administration study on presidential recruitment, underwritten by the Business Roundtable, which should shed additional light on this issue.

One unfortunate consequence of the conflict-of-interest statutes which should be remedied concerns the tax consequences of divestiture. To comply with conflict-of-interest laws, individuals entering federal service in some cases must divest themselves of large stock holdings. As a result, an official may incur unanticipated and heavy capital gains taxes. For example, former Treasury Secretary W. Michael Blumenthal lost more than a million dollars from selling his Bendix stock, incurring extra taxes, and giving up management of his portfolio when it was placed in a blind trust, according to a May 1982 issue of *Dun's Business Month*. The Committee is sympathetic to the significant financial losses that may result when officials have to divest themselves to comply with conflict-of-interest laws and recommends that the Senate Finance and the House Ways and Means Committees consider legislation that would ease the adverse tax consequences of divestiture.

Undoubtedly, there are qualified, competent men and women who choose not to enter public service because they do not wish to comply with the Ethics Act and other conflict-of-interest laws. The Committee believes, however, that the Act has not been a substantial disincentive to a large number of individuals who otherwise would have agreed to serve the President. On balance, the Committee has concluded that even if the Ethics Act does cause some talented individuals to eschew public service, the law is worthwhile because of the public confidence and trust it promotes.

B. SAFEGUARD THE INDEPENDENCE OF THE OGE

A major issue discussed at the Oversight Subcommittee's hearing was the independence of the OGE. In many instances, the Office must rule on sensitive issues involving political appointees and other high-ranking officials. For the OGE to perform its role of preventing conflicts of interest and monitoring compliance with the ethics laws by agencies and officials, it is crucial that the Director act independently and free from political pressure. For example, the Director must conduct objective reviews of the financial disclosure statements of top-level presidential appointees and be aggressive in requiring an official to take remedial action to resolve conflict-of-interest problems. Unless the Director is insulated from political pressure from the White House or the OPM, he or she could be forced to compromise on what action the official must take. Similarly, when the Director is called on to determine whether an incumbent official has breached ethical standards, the OGE could be encouraged by an administration to "go easy" on the official.

Public confidence in government is served when the public is sure that its officials are abiding by ethical standards and are free from conflicts of interest. The Congress created the OGE as an institutional check to monitor the ethics program and to prevent conflicts of interest in the Executive Branch. This institutional check is effective only when the Office can act objectively and without fear of reprisal.

Based on its investigation and hearing, the Committee has concluded that throughout its five-year history, the OGE has acted independently and free from pressure from the White House, the Department of Justice, or its parent agency, the Office of Personnel Management. The Committee believes that the present Administration has been very supportive of the OGE, both during the transition period and on an ongoing basis. For example, the OGE has fostered a close working relationship with Fred Fielding, the White House Legal Counsel, who is the DAEO for the White House. This relationship and support were particularly evident during the 1980 transition period, during which Mr. Fielding actively participated in advising nominees and potential nominees of how to resolve or prevent conflict-of-interest problems. This cooperative relationship enabled the OGE to perform its role effectively and resulted in a smooth transition from one administration to the next. Both the OGE's Acting Director, David Scott, and the former Director, J. Jackson Walter, testified that the OGE has not been pressured by the Administration. Their testimony is particularly persuasive as they have served at the OGE under both Democratic and Republican Administrations.

While the Committee commends the present administration for its strong commitment to the independence of the OGE, there is no guarantee that future administrations will be as supportive of, or not interfere with, the Office. Thus, the OGE's structure must be framed in a manner that insulates the Office from political pressure. Under present law, few such safeguards exist: all regulations proposed by the OGE are subject to approval of the Office of Personnel Management and the budget and staff levels of the Office are determined solely by the OPM. If a future administration de-

sired to emasculate the Office, if could easily do so by refusing to approve the Office's proposed regulations or by severely reducing the size of the Office's already small operating budget and staff. Similarly, the Director of the Office is vulnerable to potential influence from the White House. Because the Director serves at the pleasure of the President, the danger exists for a President to influence a director's decisions with the threat of removal. Even in instances when the Director of the Office is acting independently, there may be a public perception that he is not.

At the Subcommittee's hearing, Senator Levin stressed the importance of having structural safeguards to guarantee the independence of the OGE:

> Senator LEVIN. I do not admire a structure which has the head of an agency rendering ethics opinions on high administration officials being beholden to the President for his job.
>
> Whatever the issue is, I do not care if it is this Administration or any other administration, and it has nothing to do with which administration it is, I think the appearance of an Ethics Office, an Ethics Office rendering opinions on those kinds of questions when the head of that office can be removed at will by the President of the United States, undermines and diminishes the credibility of those opinions. The appearance is not as credible as it should be.

The Committee determined that structural changes are necessary to insulate the Office and its Director from unwarranted interference from either the White House or its parent agency, thus improving the integrity of the overall ethics system in the Executive Branch. Accordingly, S. 461 amends Title IV of the Ethics Act to:

Make the Director removable for only "good cause" and establish a set term of 5 years for the Director

By amending the removal standard and providing the Director with a set term of office, S. 461 would better insulate the Director from actual or perceived influence from the Administration. The Committee believes that the "good cause" standard will pass constitutional scrutiny because the tasks of the Director—developing, monitoring and enforcing conflict-of-interest and ethical standards for the Executive Branch—require freedom from Executive interference. As Justice Frankfurter stated in *Weiner* v. *United States*, (357 U.S. 349 (1953), "It is quite evident . . . that one who holds his office during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will." A good cause standard will correct this problem.

The "good cause" standard strikes an appropriate balance between the need to guarantee independence and the need to safeguard against abuses of power by the Director. If the President determines that the Director is overstepping his or her statutory authority or abusing his or her office, the President can state reasons for his decision to remove the Director.

A five-year term for the Director would also provide continuity in the management and the policies of the Office, which is especial-

ly important in an agency as small as the OGE. Moreover, because the five-year term overlaps presidential terms, the Director would remain in office during the transition period, when the OGE performs much of its work of reviewing financial disclosure reports of presidential nominees.

Upgrade the position of the Director to level III of the Executive Schedule

Under present law, the Director holds a position at Level V of the Executive Schedule. Upgrading the position to Level III will give the Director more symbolic enforcement authority which is necessary when the Director orders corrective actions by agencies and officials to comply with conflict-of-interest laws.

Give the OGE a separate line-item in the OPM budget

This amendment will ensure that the OGE has adequate resources to perform its responsibilities fully by providing annual congressional reviews of the OGE budget level. The Congress will, for example, be able to appropriate larger sums for the OGE during presidential transition years. Because the OGE has been able to function adequately within its present annual authorization level of $2 million, the Committee has not proposed that this authorization level be increased.

Staff levels for the OGE will still be determined by the OGE's parent agency, the Office of Personnel Management. Due to the small size of the Office, reductions-in-force and hiring freezes in OPM can be devastating to the OGE. Thus, the Committee recommends that the OPM treat the OGE as a separate entity whenever it determines that these policies could compromise the effectivenss of the OGE.

Give the Director of the OGE authority to issue regulations

This amendment does not expand the regulatory jurisdication of the OGE. Rather, it authorizes the Director to issue regulations described in subsection 402(b) directly, without requiring approval by the OPM.

C. AUTHORIZE THE DIRECTOR TO CALL ON THE INSPECTORS GENERAL FOR INVESTIGATORY ASSISTANCE

Section 403 of the Ethics Act authorizes the Director to request assistance from each Executive agency in order to implement the responsibilities of the OGE. The Act does not, however, refer to the inspectors general, who can provide valuable assistance to the OGE by investigating possible conflicts of interest. Due to its small size, the OGE is very limited in its own investigatory capacity. Giving the Director the authority to request assistance from the IGs will allow the Office to pursue possible ethical problems without increasing the size of the Office. The Committee emphasizes that this amendment does not authorize the Director to interfere with the prosecutorial or investigative discretion of the IGs. Rather, it is intended to clarify that, under 403 of the present Act, the Director may request assistance from the IGs and that the IGs should, to the greatest extent practicable, assist the Director.

D. AUTHORIZE THE DIRECTOR TO RECOMMEND THE REPLACEMENT OF ANY AGENCY ETHICS OFFICIAL

The decentralized nature of the ethics system depends heavily on the ethics officials in individual agencies. If these officials are not acting effectively, the ethics program of an entire agency could break down. The OGE testified that there have been cases where ethics officials have not been acting independently. To correct this problem, S. 461 authorizes the Director to recommend to an agency head that an ethics official be replaced if the official is not performing his or her duties properly or effectively.

E. REQUIRE THE OGE TO REVIEW FINANCIAL DISCLOSURE STATEMENTS OF TOP WHITE HOUSE OFFICIALS

Under present law, the OGE must review the financial disclosure statements of presidential appointees requiring Senate confirmation. The purpose of this requirement is to provide an independent review in order to prevent conflicts of interest among officials in top-level policy-making positions.

The Ethics Act does not require the OGE to review the financial disclosure statements of high-ranking White House officials. Rather, these statements are reviewed by the DAEO for the White House, who, under the present administration, is the White House Legal Counsel. As a matter of practice, however, the OGE routinely reviews the financial disclosure statements of White House personnel.

Because top-level White House officials are closely involved in the formulation of significant administration policies they may be most subject to conflict-of-interest problems. Also, because these officials are very close to the President and highly visible to the public, it is crucial that the public have confidence that their decisions are being made free from conflicts of interest. To address these concerns, section 8 of S. 461 requires that the OGE must review the financial disclosure statements of White House officials who are compensated at rates equivalent to or above Level II of the Executive Schedule. This review by OGE supplements rather than replaces the review of these reports by the DAEO for the White House. This provision, which parallels the coverage of officials under the independent counsel [special prosecutor] provisions of Title VI of the Ethics Act, covers 25 authorized positions in the White House staff, of which 17 are filled in the present administration. The Committee stresses that this provision does not restrict OGE review of White House financial disclosure statements to only White House officials covered by section 8, as the OGE may, as a matter of discretion, review the statements of White House officials who are not covered by this section of S. 461.

F. EXTEND THE LIMITATION ON OUTSIDE EARNED INCOME TO TOP-LEVEL WHITE HOUSE OFFICIALS

Under section 210 of the Ethics Act, presidential appointees requiring Senate confirmation cannot supplement their annual salary by more than 15 percent in outside earned income. The purposes of this section are to prevent top-level officials from using

their positions for private gain and to ensure that outside activities of these officials do not detract unduly from an official's attention to his public duties.

Although section 210 applies only to Senate-confirmed presidential appointees, the same rationale underlying this section applies to top-level White House officials. These officials, who are in key policy-making and highly visible positions, are equally subject to the dangers of using their offices for private gain and for allowing outside activities to interfere with their public duties. The present administration has recognized this fact and has, as a matter of oral policy, applied the restrictions of section 210 to White House officials.

G. AMEND THE BLIND TRUST PROVISIONS UNDER TITLE II OF THE ACT

Title II of the Ethics Act includes the first statutory provisions ever enacted with respect to blind trusts. While neither the Act nor its implementing regulations require officials to establish blind trusts, they are provided as devices to help government officials avoid conflicts of interest. The Committee endorses the availability of blind trusts. In the five-year history of the Act, however, some problems have surfaced in the implementation of the blind trust provisions. S. 461 makes the following amendments to correct these problems:

(1) Make qualified diversified blind trusts available to all executive branch officials

The Act establishes two types of blind trusts: qualified diversified blind trusts and qualified blind trusts. Both blind trusts provide protection against conflict-of-interest problems. Once a qualified diversified blind trust is established, the assets placed in it are deemed to be immediately "unknown" to the government official because the assets could be sold, and the official has no control over or contact with the assets. Thus, the official is not required to recuse himself or herself from matters dealing with assets placed in the trust. By contrast, the qualified blind trust gives only gradual blindness to officials who establish them because the original assets placed in the trust are not deemed to be "unknown" to the government official until they are disposed of or until they are reduced to a value below $1,000.

In proposing amendments to the Ethics Act in May 1982, the OGE questioned "why an Assistant Secretary of the Department of State, a Senate-confirmed position, is able to use the qualified diversified trust cure when the National Security Advisor or the White House Counsel, both non-Senate confirmed positions, are not?" The Committee shares the view of the OGE that, as a matter of equity, qualified diversified blind trusts should be available to all Executive Branch officials.

In expanding the availability of these trusts, the Ethics Act still contains many strong safeguards against abuse of these trusts.

First, under subsection 202(f)(4)(B), all qualified diversified blind trusts must be approved by the Director of the OGE. Among other factors, the Director must determine that none of the assets placed in the trust are securities of entities having substantial activities in

the reporting official's primary area of responsibility. Second, the Attorney General must also approve the qualified diversified blind trust. These reviews should not become cursory only. Rather, the Committee stresses that the Director and the Attorney General should continue to make careful reviews of the trusts to ensure compliance with both the letter and the spirit of the law. Third, like public financial disclosure reports, the executed trust instruments and the list of assets transferred to the trusts, including the category of value of each asset, are available for public inspection. This provides a public check on whether officials are participating in matters involving their assets. Finally, in the case of Senate-confirmed presidential appointees, the Act, as amended by S. 461, would still require the official to inform the Senate committee considering his nomination of his intention to comply with the qualified diversified blind trust requirements. As long as these procedural protections are in place, the option of qualified diversified blind trusts should be available to officials to make their compliance with the law as easy as possible, without compromising the need to prevent conflicts of interest.

History shows that officials have been, for the most part, reluctant to establish blind trusts due to their loss of control over assets placed in them. According to OGE statistics, in the present administration, only 14 officials have established qualified diversified blind trusts and only 19 officials have established qualified blind trusts. Thus, the Committee is confident that extending qualified diversified blind trusts will not overburden the OGE administratively.

(2) Allow blinding of "old-family trusts"

The OGE testified that it has had difficulty in applying the blind trust provisions to "old-family trusts." These are trusts that have already been established by an ancestor for the benefit of his descendants, one of whom is now a government official. Under the present law, this type of trust cannot be amended to comply with the blind trust requirements, unless it was originally intended to be blind.

David Scott testified on the consequences of this inability to "blind" such trusts, even if all parties to the trust agree to do so:

> Because the trust cannot be blinded, the government official must find out what the trust holds in order to report the trust assets. He is thereby limited in what official actions he may take under the criminal conflict-of-interest provision which makes it unlawful knowingly to take official action in a matter in which one has a financial interest. The non-government beneficiaries of the "old-family trust" also suffer, because their trust holdings must be made public in the government official's financial disclosure report. I recommend that the Act be amended to allow the interested parties to an "old-family trust" to agree, if possible, to blind the trust as to the government official who is a beneficiary.

Section 10 of S. 461 corrects this problem by providing that any existing trust can be amended to comply with the blind trust re-

quirements of Title II, as long as the trusts are approved by the Director. The section further provides that if the terms of the existing trust do not permit amendment, the trust shall be considered a qualified blind trust if all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of the Act and that a trustee meeting the requirements of the Act will be or has appointed.

Under present law and practice, no trust may be considered to be a qualified trust for purposes of the Act until it is certified by the Director of the Office of Government Ethics pursuant to his determination that such certification is in the particular case necessary and appropriate to assure compliance with applicable conflicts-of-interest laws and regulations. It is the Committee's view that when exercising this function under the provisions of section 202(f)(7), as amended, the Director must be alert to the principles of state trust and estate law while balancing the Federal concerns expressed in the Act. The Committee feels, for example, that in cases where a trust instrument by its terms cannot be amended, the Director will have to assure himself that beneficiaries who are not "interested parties" will not reveal any information as to the trustee's portfolio acquisitions or other prohibited information to the interested parties. Thus, while in a typical case only the trustee, the reporting individual, and the other interested parties might execute the agreement referred to in section (202)(f)(7)(A), other beneficiaries who are not interested parties might be required to execute further documents agreeing to uphold the confidentiality of the blind trust arrangement to assure the Director that appropriate confidentiality will be maintained, as a pre-condition for certification.

V. Conclusion

The need for the Office of Government Ethics to guide, coordinate, monitor, and enforce Executive Branch ethics policies still exists. The OGE has, in its almost five-year history, performed its statutory duties thoroughly and responsibly, and thus should be reauthorized for five more years. There are, however, certain areas in which the role of the OGE should be strengthened and clarified. The committee believes that by improving the structure of the Office and by correcting problems and inequities in the financial disclosure system, S. 461 will promote a stronger and most effective ethics program in the Executive Branch.

VI. Section-by-Section Analysis of S. 461

Section 1

The first section specifies that the provisions of S. 461 amend the Ethics in Government Act of 1978, except as otherwise expressly provided.

Section 2

Section 2 amends section 401(b) of the Ethics Act to establish a five-year term for the Director of the Office of Government Ethics

and to provide that the Director shall be removable only for good cause.

Section 3

Section 3 upgrades the position and pay of the Director of the Office of Government Ethics from Level V to Level III of the Executive Schedule.

Section 4

Section 4 amends section 402 and 404 of the Ethics Act to authorize the Director of the Office of Government Ethics to issue regulations pertaining to financial disclosure, conflicts of interest, and ethics in the Executive Branch.

Section 5

Section 5 provides that the budget for the Office of Government Ethics shall be a separate line-item within the budget for the Office of Personnel Management.

Section 6

Section 6 authorizes the Director of the Office of Government Ethics to use the Inspectors General to investigate possible conflicts of interest and to conduct audits.

Section 7

Section 7 amends section 402(b) of the Ethics Act to permit the Director of the Office of Government Ethics to recommend the replacement of any designated agency ethics official if the official fails to properly and effectively perform his or her duties.

Section 8

Section 8 amends section 203(c) of the Ethics Act to include White House aides compensated at or above Level II of the Executive Schedule among the officials whose financial disclosure forms are reviewed by the Office of Government Ethics.

Section 9

Section 9 amends section 210 of the Ethics Act to extend the limit on outside earned income to cover White House aides who are compensated at or above Level II of the Executive Schedule.

Section 10

Section 10 amends the blind trust provisions of the Ethics Act to extend the availability of qualified diversified blind trusts to all Executive Branch officials and to allow "old family trusts" to be blinded if all parties agree and if the trusts are approved by the Office of Government Ethics.

Section 11

Section 11 extends the authorization for the Office of Government Ethics for five years beyond its present expiration date of October 1, 1983.

Section 12

Section 12 sets an effective date of October 1, 1983, for the provisions of S. 461.

VII. Estimated Cost of Legislation

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 4, 1983.

Hon. William V. Roth, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 461, a bill to extend the authorzation of appropriations for the Office of Government Ethics for five years.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

Congressional Budget Office—Cost Estimate

1. Bill number: S. 461.
2. Bill title: A bill to extend the authorization of appropriations for the Office of Government Ethics for five years.
3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, March 17, 1983.
4. Bill purpose: This bill authorizes the appropriation of $2 million per year in fiscal years 1984 through 1988 for the activities of the Office of Government Ethics.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1984	1985	1986	1987	1988
Authorization level	2.0	2.0	2.0	2.0	2.0
Authorization level	1.9	2.0	2.0	2.0	2.0

The costs of this bill fall within budget function 800.

Basis of Estimate: This estimate assumes the full amount authorized in the bill will be appropriated. The estimated level of outlays is based on historical spending patterns.

6. Estimated cost to State and local governments: None.
7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Judith Walker.
10. Estimate approved by: C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

VIII. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 461, as well as the impact of the bill on personal privacy. The bill will impose no additional regulatory burden. In balance, the bill will have no significant impact on personal privacy or paperwork beyond that imposed by present law.

IX. Rollcall Vote in Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during Committee consideration of this legislation is as follows:

Final passage: Ordered reported, 10 yeas; 0 nays.

YEAS (10)	NAYS (0)
Percy	
Stevens	
Cohen	
Durenberger	
Rudman	
Cochran	
Eagleton	
Sasser	
Levin	
Roth	

X. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to the omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes are proposed is shown in roman):

Ethics in Government Act of 1978

(Public Law 95-521)

TITLE II—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

* * * * * * *

Sec. 202. (a) Each report filed pursuant to section 201(d) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating $100 or more in value.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $100 in amount or

value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than $1,000,
(ii) greater than $1,000 but not more than $2,500,
(iii) greater than $2,500 but not more than $5,000,
(iv) greater than $5,000 but not more than $15,000,
(v) greater than $15,000 but not more than $50,000,
(vi) greater than $50,000 but not more than $100,000, or
(vii) greater than $100,000.

(2)(A) The identity of the source and a brief description of any gifts of transportation, lodging, food, or entertainment aggregating $250 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of any individual need not be reported, and any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(B) The identity of the source, a brief description, and the value of all gifts other than transportation, lodging, food, or entertainment aggregating $100 or more in value received from any source other than a relative of the reporting individual during the preceding calendar year, except that any gift with a fair market value of $35 or less need not be aggregated for purposes of this subparagraph.

(C) The identity of the source and a brief description of reimbursements received from any source aggregating $250 or more in value and received during the preceding calendar year.

(D) In an unusual case, a gift need not be aggregated under subparagraph (A) or (B) if a publicly available request for a waiver is granted.

(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a relative or any deposits aggregating $5,000 or less in a personal savings account. For purposes of this paragraph, a personal savings account shall include any certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

(4) The identity and category of value of the total liabilities owed to any creditor other than a relative which exceed $10,000 at any time during the preceding calendar year, excluding—

(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $10,000 as of the close of

the preceding calendar year need be reported under this paragraph.

(5) Except as provided in this paragraph, a brief description, the date, and category of value of any purchase, sale, or exchange during the preceding calendar year which exceeds $1,000—

(A) in real property, other than property used solely as a personal residence of the reporting individual or his spouse; or

(B) in stocks, bonds, commodities futures, and other forms of securities.

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the two-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

(B) If any person, other than the United States Government; paid a nonelected reporting individual compensation in excess of $5,000 in any of the two calendar years prior to the calendar year during which the individual files his first report under this title, the individual shall include in the report—

(i) the identity of each source of such compensation; and

(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

The preceding sentence shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(7) A description of the date, parties to, and terms of any agreeement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer.

(b) Each report filed pursuant to subsections (a), (b), and (c) of section 201 shall include a full and complete statement with respect to the information required by—

(1) paragraph (1) of subsection (a) for the year of filing and the preceding calendar year,

(2) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than thirty-one days before the filing date, and

(3) paragraphs (6) and (7) of subsection (a) as of the filing date but for periods described in such paragraphs.

(c) In the case of any individual described in section 201(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

(d)(1) The categories for reporting the amount or value of the items covered in paragraphs (3), (4), and (5) of subsection (a) area as follows:

(A) not more than $5,000;

(B) greater than $5,000 but not more than $15,000;

(C) greater than $15,000 but not more than $50,000;

(D) greater than $50,000 but not more than $100,000;

(E) greater than $100,000 but not more than $250,000; and

(F) greater than $250,000.

(2) For the purposes of paragraph (3) of subsection (a) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (a) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1) of this subsection. If the current value of any other item required to be reported under paragraph (3) of subsection (a) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect ot other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the methods used in determining such assessed value shall be included in the report.

(e)(1) Except as provided in the last sentence of this paragraph, each report required by subsection (a), (b), or (c) shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

(A) The source of items of earned income earned by a spouse from any person which exceed $1,000 and, with respect to a spouse or dependent child, all information required to be re-

ported in subsection (a) (1) ()B with respect to income derived from any asset held by the spouse or dependent child and reported pursuant to paragraph (3). With respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

(B) In the case of any gifts received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identify of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

(C) In the case of any reimbusements received by a spouse which are not received totally independent of the spouse's relationship to the reporting individual, the identity of the source and a brief description of each such reimbursement.

(D) In the case of items described in paragraphs (3) through (5), all information required to be reported under these paragraphs other than items (i) which the reporting individual certifies represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) which are not in any way, past or present, derived from the income, assets or activities of the reporting individual, and (iii) from which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Each report referred to in subsection (b) of this section shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a), as specified in this paragraph.

(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsection (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

(A) any qualified blind trust (as defined in paragraph (3)); or

(B) a trust—

(i) which was not created directly by such individual, his spouse, or any dependent child, and

(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge of,

but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust under subsection (a)(1)(B) of this subsection.

(3) For purposes of this subsection, the term "qualified blind trust" includes any trust in which a reporting individual, his spouse, or any dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

(A) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or any investment adviser (who in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust who)—

(i) is independent of an unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party,

(ii) is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture of other investment with, any interested party, and

(iii) is not a relative of any interested party.

(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the supervising ethics office of the reporting individual.

(C) The trust instrument which establishes the trust provides that—

(i) except to the extent provided in subparagraph (B) of this paragraph, the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(iii) the trustee shall promptly notify the reporting individual and his supervising ethics office when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less that $1,000;

(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1)(B) of this section, but such report shall not identify any asset or holding;

(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets

of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(D) The proposed trust instrument and the proposed trustee is approved by the reporting individual's supervising ethics office.

For purposes of this subsection, "interested party" means a reporting individual, his spouse, and any dependent child if the reporting individual, his spouse, or dependent child has a beneficial interest in the principal or income of a qualified blind trust; "broker" has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); investment adviser includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts; and "supervising ethics office" means the Office of Government Ethics.

(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of section 208 of title 18, United States Code, and any other conflict of interest statutes or regulations of the Federal Government, until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

(B) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual [appointed to office by the President, by and with the consent of the Senate], or the spouse, dependent child, or minor child of such a person, if—

(i) the Director of the Office of Government Ethics, in concurrence with the Attorney General, finds that—

(I) the assets placed in the trust consist of a well-diversified portfolio of readily marketable securities;

(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraphs (3)(C) (iii) and (iv) of this subsection, from making public or informing an interested party of the sale of any securities;

(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v) of this subsection, to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust established prior to the effective date of this Act which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); and

(ii) the reporting individual (other than an individual who is in such an office at the time of enactment of this Act and has an existing trust which is a good faith attempt to create a blind trust) has informed the Congressional committee considering his nomination at the time his financial disclosure statement is filed with the Committee of his intention to comply with this paragraph.

(5)(A) The reporting individual shall, within thirty days after a qualified blind trust is approved by his supervising ethics office, file with such office a copy of—

(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d) of this section.

(B) The reporting individual shall, within thirty days of transferring an asset (other than cash) to a previously established qualified blind trust, notify his supervising ethics office of the identity of each such asset and the category of value of each asset as determined under subsection (d) of this section.

(C) Within thirty days of the dissolution of a qualified blind trust, a reporting individual shall—

(i) notify his supervising ethics office of such dissolution, and

(ii) file with such office a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (d) of this section of each such asset.

(D) Documents filed under subparagraphs (A), (B), and (C) of this paragraph and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 205 and the provisions of that section shall apply with respect to such document and lists.

(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the reporting individual's supervising ethics office within five days of the date of the communication.

(6)(A) A trustee of a qualifed blind trust shall not knowingly or negligently (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3) of this subsection, (ii) acquire any holding the ownership of which is prohibited by the trust instruments; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) of this subsection or the trust agreement; or (iv) fail to file any document required by this subsection.

(B) A reporting individual shall not knowingly or negligently (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) of this subsection or (ii) fail to file any document required by this subsection.

(C)(i) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,000.

(ii) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of subparagraph (A) or (B) of this paragraph. The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $1,000.

(7) Any trust which is in existence prior to the date of the enactment of this Act shall be considered a qualifed blind trust if—

[(A) the supervising ethics office determines that the trust was a good faith effort to establish a blind trust;

[(B) the previous trust instrument is amended or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and]

(A) the trust is amended to comply with requirements of paragraph (3) or, if such trust instrument does not by its terms permit amendment, all parties to the trust instrument, including the reporting individual and the trustee, agree in writing that the trust shall be administered in accordance with the requirements of paragraph (3)(C) and a trustee is (or has been) appointed who meets the requirements of paragraph (3); and

[C] *(B)* a copy of the trust instrument (except testamentary provisions), a list of the assets previously transferred to the trust by an interested party and the category of value of each such asset at the time it was placed in the trust, and a list of assets previously placed in the trust by an interested party which have been sold is filed and made available to the public as provided under paragraph (5) of this subsection.

(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

(h) A report filed pursuant to subsection (d) or (e) of section 201 need not contain the information described in subparagraphs (A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employer of the Federal Government.

FILING OF REPORTS

SEC. 203. (a) Except as otherwise provided in this subsection; the reports required under this title shall be filed by the reporting individual with the designated agency official at the agency by which he is employed (or in the case of an individual described in section 201(e), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

(b) The President and the Vice President shall file reports required under this title with the Director of the Office of Government Ethics.

(c) Copies of the reports required to be filed under this title by the Postmaster General, the Deputy Postmaster General, the Governors of the Board of Governors of the United States Postal Service, designated agency officials *employees of the White House Office who are compensated at or above a rate equivalent to level II of the Executive Schedule under section 5313 of title 5, United States Code,* candidates for the office of President or Vice President and officers and employees in (and nominees to) offices or positions which require confimation by the Senate or by both Houses of Congress other than those referred to in subsection (f) shall be transmitted to the Director of the Office of Government Ethics. The Director shall forward a copy of the report of each nominee to the congressional committee considering the nomination.

(d) Reports required to be filed under this title by the Director shall be filed in the Office of Government Ethics and, immediately after being filed, shall be made available to the public in accordance with this title.

(e) Each individual identified in section 201(c) shall file the reports required by this title with the Federal Elections Commission.

(f) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

(g) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title.

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OUTSIDE EARNED INCOME

SEC. 210. Except where the employee's agency or department shall have more restrictive limitations on outside earned income, all employees covered by this title who are compensated at a pay grade in the General Schedule of grade 16 or above and who occupy nonjudicial full-time positions appointment to which is required to be made by the President, by and with the advice and consent of the Senate, *and employees of the White House Office who are compensated at or above rate equivalent to level II of the Executive Schedule under Section 5313 of title 5, United States Code,* may

not have in any calendar year outside earned income attrributable to such calendar year whch is in excess of 15 percent of their salary.

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TITLE IV—OFFICE OF GOVERNMENT ETHICS

OFFICE OF GOVERNMENT ETHICS

SEC. 401. (a) There is established in the Office of Personnel Management an office to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate[.], *and who shall serve for a term of five years. The Director shall be removed from office only for good cause.*

SEC. 402. (a) The Director shall provide[, under the general supervision of the Office of Personnel Management,] overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) developing [and recommending to the Office of Personnel Management], in consultation with the Attorney General, rules and regulations to be promulgated by the [President or the Office of Personnel Management] *President or the Director* pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by title II of this Act;

(2) developing [and recommending to the Office of Personnel Management] in consultation with the Attorney General, rules and regulations to be promulgated by the [President or the Office of Personnel Management] *President or the Director* pertaining to the identification and resolution of conflicts of interest;

(3) monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical problems revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations issued by the President or the [Office of Personnel Management] *Director* governing

conflict of interest and ethical problems and the filing of financial statements;

(7) consulting, when requested, with agency ethics counselors and other responsible officials regarding the resolution of conflict of interest problems in individual cases:

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) ordering corrective action on the part of agencies and employees which the Director deems necessary;

(10) requiring such reports from executive agencies as the director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) evaluating, with the assistance of the Attorney General, the need for changes in rules and regulations issued by the [Office of Personnel Management] *Director* and the agencies regarding conflict of interest and ethical problems, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13) cooperating with the Attorney General in developing an effective system for reporting allegations of violations of the conflict of interest laws to the Attorney General, as required by section 535 of title 28, United States Code;

(14) providing information on and promoting understanding of ethical standards in executive agencies; [and]

(15) developing [and recommending for promulgation by the Office of Personnel Management] *and promulgating* such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by title II of this Act[.] *; and*

(16) recommending the replacement of any agency ethics official where such official fails to properly and effectively perform his or her duties.

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

ADMINISTRATIVE PROVISIONS

SEC. 403. Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director

may determine to be necessary for the performance of his duties. *The authority of the Director under this section includes the use of the Inspectors General to investigate possible conflicts of interest and to conduct audits at the request of the Director.*

SEC. 404. In promulgating rules and regulations pertaining to financial disclosure, conflict of interest, and ethics in the executive branch, the [Office of Personnel Management] *Director* shall issue rules and regulations in accordance with chapter 5 of title 5, United States Code. Any person may seek judicial review of any such rule or regulations.

AUTHORIZATION OF APPROPRIATIONS

SEC. 405. There are authorized to be appropriated to carry out the provisions of this title, and for no other purpose—

(1) not to exceed $2,000,000 for the fiscal year ending September 30, 1979; and

(2) not to exceed $2,000,000 for each of the [four] *nine* fiscal years thereafter.

ANNUAL PAY

SEC. 406. [Section 5316 of title 5, United States Code, is amended by adding at the end the following new paragraph:

["(146) Director of the Office of Government Ethics.".]

(a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director of the Office of Government Ethics."

(b) Section 5316 of title 5, United States Code, is amended by striking out the item:

"Director of the Office of Government Ethics."

TITLE 31—MONEY AND FINANCE

* * * * * * *

SUBTITLE II—THE BUDGET PROCESS

* * * * * * *

§ 1105. Budget contents and submission to Congress

(a) During the first 15 days of each regular session of Congress, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(1) information on activities and functions of the Government.

(2) when practicable, information on costs and achievements of Government programs.

(3) other desirable classifications of information.

(4) a reconciliation of the summary information on expenditures with proposed appropriations.

(5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal

year for which the budget is submitted and the 4 fiscal years after that year.

(6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under—

(A) laws in effect when the budget is submitted; and

(B) proposals in the budget to increase revenues.

(7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.

(8) estimated expenditures and receipts, and appropriations and proposed appropriations of the Government for the current fiscal year.

(9) balanced statements of the—

(A) condition of the Treasury at the end of the prior fiscal year;

(B) estimated condition of the Treasury at the end of the current fiscal year; and

(C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.

(10) essential information about the debt of the Government.

(11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government.

(12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing—

(A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and

(B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.

(13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.

(14) an allowance for unanticipated uncontrollable expenditures for that year.

(15) a separate statement on each of the items referred to in section 301(a)(1)–(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)–(5)).

(16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3)) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.

(17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments under each program for which there is an authorization of appropriations for that following fiscal year when the appropriations are authorized to be included in an appropriation law for the fiscal year before

the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year, for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, which receipts in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing—

(A) the programs for meteorology and the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of—

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

(24) recommendations on the return of Government capital to the Treasury by a mixed-ownership corporation (as defined in section 9101(2) of this title) that the President decides are desirable.

(25) a separate statement specifying the estimated expenditures and proposed appropriations the President decides are necessary to support the Office of Government Ethics in the fiscal year for which the budget is submitted and the four fiscal years after that year.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are

less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes about the current fiscal year that were made before the budget or information was submitted.

§ 1106. Supplemental budget estimates and changes

(a) Before July 16 of each year, the President shall submit to Congress a supplemental summary of the budget for the fiscal year for which the budget is submitted under section 1105(a) of this title. The summary shall include—

(1) for that fiscal year—

(A) substantial changes in or reappraisals of estimates of expenditures and receipts;

(B) substantial obligations imposed on the budget after its submission;

(C) current information on matters referred to in section 1105(a)(8) and (9)(B) and (C) of this title; and

(D) additional information the President decides is advisable to provide Congress with complete and current information about the budget and current estimates of the functions, obligations, requirements, and financial condition of the United States Government;

(2) for the 4 fiscal years following the fiscal year for which the budget is submitted, information on estimated expenditures for programs authorized to continue in future years, or that are considered mandatory, under law; and

(3) for future fiscal year, information on estimated expenditures of balances carried over from the fiscal year for which the budget is submitted.

(b) Before April 11 and July 16 of each year, the President shall submit to Congress a statement of changes in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior changes proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those changes on the information submitted under section 1105(a)(1)—(14), *(a)(25),* and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

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ADDITIONAL VIEWS OF SENATOR JIM SASSER

Approval by the committee of legislation reauthorizing the Office of Government Ethics (OGE) for another five years is an important and necessary step for all concerned with maintaining proper ethical standards among high-level officials throughout the federal government.

Many of us—both in this committee and in the full Senate—fought vigorously for passage of the 1978 Ethics in Government Act and its Title IV, which established the Office of Government Ethics, and we are proud to support the extension of this provision. I, for one, am pleased with the improvements incorporated into S. 461; they are a reflection of the thorough work on the bill by the Chairman and by the Ranking Member of the Subcommittee on Oversight of Government Management, Senator Cohen and Senator Levin.

These improvements satisfy the concerns which I raised during the subcommittee's February 24, 1983 hearing on S. 461.

As introduced, S. 461 called merely for a five-year reauthorization of OGE. This in itself would have been insufficient. The application of the act over the past several years, as well as problems in the Executive Branch of government since then, made it clear that problems exist.

Indeed, consider the recent developments at the U.S. Environmental Protection Agency, where top-level officers have had their numbers decimated through dismals and resignations wrought by allegations of improper and unethical behavior.

Earlier this year, the Washington Post published an article in which it asserted that in the Reagan Administration there was "slippery behavior . . . in the highest reaches of government." And at the February 24, 1983 subcommittee hearing on S. 461, a Common Cause spokesperson described the Administration's record in matters of government ethics as "far from stellar."

In this context, it is imperative that the Congress make a legislative statement re-emphasizing the importance of the need for high ethical standards in government. The strengthening and reauthorization of OGE is the perfect vehicle to serve as such a statement.

The major problem with the Office of Government Ethics is that its director does not now have sufficient independence in order to conduct his duties properly.

David Scott, the acting director of OGE, told the subcommittee as its February 24, 1983 hearing that he had to clear his official testimony with the White House. To his credit, Mr. Scott made it clear that such an arrangement was not his preference.

As Senator Levin pointed out at that time, such an arrangement, such a control on the part of the White House, creates a bad appearance, an appearance that "is quite bad when it's an office whose head is appointed by the President."

The amendment calling for a five-year term of appointment in which the OGE director is removable only for good cause is a sound answer to this arrangement.

Second, there is the problem of OGE's budgetary independence. The office's budget is not now a line item; rather, it is enveloped in the budget request of the Office of Personnel Management (OPM), of which it is a part. This, too, creates a bad arrangement.

As Acting Director Scott pointed out in his February 24 testimony, "When President Reagan directed a personnel freeze upon taking office in 1981, OGE was swept into it because it was treated like any other OPM entity. Had OGE been considered a separate agency for hiring purposes it could have escaped an unnecessary hardship, because the freeze directive itself exempted small agencies with less than 100 employees. . . . Because of OGE's small staff and budget a small ripple in OPM's budget and staffing becomes a tidal wave when it impacts on OGE.

As amended by the subcommittee, S. 461 contains the language necessary to make OGE's budget an independent line item in the federal budget.

Senators Cohen and Levin have also incorporated several other perfecting amendments, all of which merit the support of the full Senate.

There is one addendum to the discussion on this legislation, as reported by committee, which ought to be underscored as empahtically as possible, in light of all the recent reports of questionable and marginal behavior by high-level federal officials: that is, a reauthorized and revitalized Office of Government Ethics should take it upon itself to pursue more aggressively its statutory mandate of "promoting understanding of ethical standards in executive agencies."

It is probable that we will never eliminate completely unethical behavior in every reach of the government, but I believe that many ethical questions and conflicts may be avoided in the future if there is a greater consciousness and awareness of ethical standards throughout government.

In this spirit, I believe that passge of S. 461, as reported by the Governmental Affairs Committee, will make a statement which needs urgently to be made about ethics in government, and it will serve to reinforce the commitment on the part of the Congress to a strong order of ethical behavior in government—a commitment and an order we first heralded five years ago when we established the Office of Government Ethics.

I fully support S. 461 as reported and urge its passage by the Senate.

JIM SASSER.

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